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RS THANALACHIMI

v.

SUNDARARAJU MATTAYA

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HIGH COURT MALAYA, PULAU PINANG
VAZEER ALAM MYDIN MEERA JC
[CIVIL SUIT NO: MT3(MT2)-22-492-2001]
2 NOVEMBER 2010

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CONTRACT: *Marriage - Breach - Breach of promise to marry - Defendant claimed he fulfilled obligation to marry Singaporean plaintiff through Hindu wedding ceremony - Wedding not officiated by Registrar of Marriages and so void for non-registration - Plaintiff unaware that wedding had to be registered - Whether plaintiff's claim for breach of*

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promise to marry and damages justified - Law Reform (Marriage & Divorce) Act 1976, s. 22(4)

DAMAGES: *Quantum - General and special damages - Breach of promise to marry - Pain and suffering involving foreign plaintiff - Plaintiff's loss of income - Plaintiff's additional expenses on engagement*

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and wedding - Whether local cases used as precedent to assess damages - Hindu wedding ceremony not legally officiated - Whether claim for damages successful

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The plaintiff was a Singaporean residing and working in London whereas the defendant was a Malaysian residing and working in California, United States. The parties became acquainted after they were introduced to each other by their respective parents. The defendant made several visits to the plaintiff in London and whilst there, had proposed marriage to her. The plaintiff accepted

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the defendant's proposal and relying on his promise to marry, gave up her job and voluntarily surrendered her home in London to the mortgagee and left to Singapore. The engagement ceremony was conducted on 18 October 1992 in Singapore and on 1 November 1992, both the defendant and plaintiff went through a traditional

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Hindu wedding ceremony in Teluk Intan, Perak, Malaysia. The wedding ceremony was not officiated by the Registrar or Assistant Registrar of Marriages as required under the Law Reform (Marriage & Divorce) Act 1976 ('the Act'). Neither was the marriage subsequently registered under the Act or a marriage

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certificate issued and, thus, that marriage was void in law pursuant to s. 22(4) of the Act. The plaintiff claimed that the defendant had represented to her that the Hindu wedding

ceremony was sufficient and valid in law. In reliance of that representation, the plaintiff agreed to consummate that marriage. Shortly after the wedding, the plaintiff left to Singapore to collect her belongings as the defendant had agreed to take her to the United States ('US') at the end of November 1992 but upon her return, she was confronted by the defendant's angry relatives and was asked to leave. She claimed that she did not know what wrong she had done to have been treated that way.

The defendant claimed that all along he had intended to take the plaintiff with him to the US at the end of November 1992. His enquiries with the US Embassy revealed that the plaintiff would not be able to enter US for a period of two years from the date of marriage, ie, a lawful marriage, and thus, the defendant had wanted to temporarily delay the registration of the marriage. The defendant left to the US alone at the end of November 1992 but by then he had decided that their marriage would not work. The plaintiff travelled to the US in December 1992 with the hope of resolving matters with the defendant but was refused entry into his home. The defendant later filed a police complaint against the plaintiff describing her as his girlfriend who broke into his home and caused property damage after he found her sleeping in his room. The plaintiff was taken to hospital for psychiatric evaluation but upon her discharge, the defendant still refused to take her into his home. The plaintiff then filed for maintenance in the California Courts and in the course of its proceedings, found out for the first time that their marriage was not valid. The plaintiff then wrote to the National Registration Department in Malaysia seeking confirmation of her marriage status. The said department confirmed the marriage was void for non-registration. The plaintiff then discontinued the action in California and filed the present suit for breach of promise to marry and damages.

Held (allowing the plaintiff's claim with costs):

(1) Both parties gave two conflicting versions on the issue of registration of the marriage in Malaysia. The defendant claimed that the plaintiff had known that there would not be a registration of marriage in Malaysia whereas, the plaintiff denied and claimed that she was led to believe that the Hindu marriage was a lawful and valid marriage. The plaintiff's claim was accepted *ie*, that she would not have consummated the Hindu marriage if she knew that it was not legally validated due to the fact that she was a very traditional and religious Hindu. (paras 16 & 17)

(2) The plaintiff's willingness to give up everything she had in London for the promise of marriage by the defendant was done at great personal sacrifice. The plaintiff must have had complete faith in the defendant's word for her to have given up her home and career in London to start a new life with the defendant. Having done all that, there was no reason for the plaintiff to suddenly become unreasonable and jeopardise her own marriage. The plaintiff's intention to go to Singapore to collect her belongings gave rise to some differences between them which were hardly considered grounds to end a marriage. They had very little time for their departure to the US and the plaintiff's explanation was accepted, *ie*, that her intended trip to Singapore was to collect her belongings. (para 18)

(3) The defendant in his evidence claimed that both their personalities were in total contrast resulting in arguments during that short 20 odd days after their Hindu wedding. That argument was difficult to fathom due to the fact that the defendant had made several visits to the plaintiff in London and spent time with her. Furthermore, the defendant's claim that the marriage alliance had irretrievably broken down hardly a few weeks after the Hindu wedding was found to be wholly untenable due to the fact that he had not given any cogent reasons for that contention leaving the plaintiff with unsatisfied answers even after 18 years of that failed marriage. (paras 19 & 21)

(4) The defendant claimed that he did not take the plaintiff with him to the US because her conduct after the Hindu wedding was such that it would have been impossible for him to continue a life with her and, thus, he admitted the breach of his promise to marry the plaintiff. From the pleadings and the evidence, it was clear that the defendant had no intention of fulfilling his promise to marry the plaintiff because he had formed a settled decision not to have a married life with her or to take her to the US with him. (para 20)

(5) The defendant's argument that he had fulfilled his obligation in his promise to marry by going through the Hindu wedding ceremony was not accepted because, a promise to marry must result in a valid and lawful marriage with legal remedies that would enable the plaintiff to avail herself from it. The plaintiff would have been entitled to all legal rights, remedies and maintenance from the Act if that Hindu wedding was

registered in accordance with it and, thus, would not have resulted in her being dismissed in the California Court as the defendant's girlfriend for the fact that in the eyes of the law, they were not husband and wife. (para 22)

(6) The plaintiff's version of events was more probable and she had proved her case on a balance of probabilities. The defendant's counterclaim was disallowed for the fact that the matters complained of had taken place in California outside the court's jurisdiction. (para 24)

(7) On the quantum of damages, there were only a few cases that dealt with breach of promise to marry and those cases involved local parties and local conditions prevailing some 30 to 40 years ago. As this case involved a foreign plaintiff and having taken into account the standing and conduct of the parties including her sacrifices, losses, hurt, pride and shame, a sum of RM150,000 was awarded in general damages. (paras 29, 30 & 33)

(8) The plaintiff was awarded with RM21,936.30 in special damages having proven that she had given her Indian Rupees of 114,000 spent in India towards the engagement and wedding expenses. However, she was unable to claim for loss of income and, thus, failed in her claim for RM120,000. (para 34)

Case(s) referred to:
Dennis v. Sennyah [1963] 1 LNS 26 HC ***(refd)***
Doris Rodrigues v. Bala Krishnan [1982] 1 LNS 205 ***(refd)***
Finlay v. Chirnley [1888] 20 QBD 494 ***(refd)***
Kremezi v. Ridgway [1949] 1 All ER 662 ***(refd)***
Nafsiah v. Abdul Majid (No 2) [1969] 1 LNS 114 HC ***(refd)***
Quirk v. Thomas [1916] 1 KB 516 ***(refd)***
Smith v. Woodfine [1857] 1 CN (NS) 660 ***(refd)***
T v. O [1994] 4 CLJ 593 HC ***(refd)***

Legislation referred to:
Law Reform (Marriage & Divorce) Act 1976, s. 22(4)

For the plaintiff - Balwant Singh Sidhu; M/s Balwant Singh Sidhu & Co
For the defendant - Lalitha Menon; M/s Lalitha Menon & Assocs

Reported by Melanie Murthy

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JUDGMENT

Vazeer Alam Mydin Meera JC:

[1] This is a claim for breach of promise to marry - a sad saga that spans several cities in three continents. The plaintiff is a Singaporean while the defendant is a Malaysian. At the material time in 1992 the plaintiff was residing and working in London, while the defendant was residing and working in California. The parties became acquainted following introduction by their respective parents. After initial contact through the phone, the defendant had visited the plaintiff on several occasions in London. They had also gone on vacation to Scotland.

[2] Sometime in 1992, whilst in London, the defendant had proposed marriage to the plaintiff. The plaintiff had accepted that proposal. I gather from the evidence of both parties that there was to be an engagement ceremony in Singapore followed by a wedding ceremony in Teluk Intan, Perak. The plan was for the plaintiff and defendant to move to the United States after the marriage.

[3] In reliance of the defendant's promise to marry, the plaintiff gave up her job and voluntarily surrendered her home in London to the mortgagee and left for Singapore. She travelled from London to Singapore *via* India to purchase wedding accessories including sarees and the like. The defendant had given her Indian Rps114,000 towards account of these purchases and the plaintiff had also expended monies of her own.

[4] The engagement ceremony was conducted on 18 October 1992 in Singapore. On 1 November 1992 both plaintiff and defendant had gone through a traditional Hindu wedding ceremony at the Chee Fong Khor Moral Uplifting Society Building in Teluk Intan, Perak. That wedding ceremony was not officiated by the Registrar or Assistant Registrar of Marriages as is required under the Law Reform (Marriage & Divorce) Act 1976 ("the said Act"). Neither was the marriage subsequently registered under the said Act nor a marriage certificate issued. Therefore, in law, that marriage is void pursuant to s. 22(4) of the said Act and there is no subsisting valid marriage between the parties. (See the case of *T v. O* [1994] 4 CLJ 593).

[5] The plaintiff says that the defendant had represented to her that the Hindu rites ceremony that they had undergone was sufficient and valid in law. In reliance of that representation, the

plaintiff consummated the union after the Hindu rites ceremony. The plaintiff asserts that had she known otherwise, she would not have agreed to consummate the union. After the Hindu ceremonial marriage, as it was customary the parties had stayed in the defendant's parents' home in Teluk Intan for several days then visited and stayed at the homes of the defendant's siblings in various parts of Malaysia. They had also visited and stayed in the plaintiff's parents' home in Singapore. They went to Bali for their honeymoon. In short they did what any newlyweds would have done. The very early days seemed to have been happy.

[6] All that was to change for the worse. The plaintiff says that the defendant had agreed to take her to the United States at the end of November 1992. In fact the defendant had paid for the air ticket and she had booked her flight. She left for Singapore to collect her belongings and came back to Kuala Lumpur. There, at one of the defendant's sister's house, the plaintiff and her father in the presence of the defendant were confronted by angry relatives of the defendant. According to the plaintiff, after a torrent of verbal abuse lasting several hours, she was shown the door. She left for Singapore the next day. The plaintiff says that she does not know why she had to undergo that treatment in the hands of the defendant's relatives, whilst the defendant stood by and watched. She says that till today she does not know what grave wrong that she had done for her to be treated in that way by the defendant and his family members.

[7] The defendant in his pleadings and evidence states that he had intended to take the plaintiff along with him to the United States at the end of November 1992. The defendant's enquiries with the United States Embassy had revealed that if the marriage is lawfully registered then the plaintiff would not be able enter the United States for a period of two years from the date of marriage. Therefore, the defendant had wanted to temporarily delay the registration of the marriage. However, according to the defendant, he did not take the plaintiff to the United States as serious differences had arisen between the plaintiff and the defendant leading to arguments and disagreements within 22 days of the Hindu marriage ceremony. These differences had apparently arisen out of the plaintiff's conduct in wanting to pry away the defendant from his mother; the plaintiff not treating the defendant's family members with the respect; embarrassing the defendant by not attending the wedding reception after the Hindu marriage

ceremony; and the plaintiff's insistence that another Hindu wedding ceremony be held in Singapore which is unacceptable in Hindu custom and culture. The defendant then left for the United States at the end of November 1992 by which time he had decided that the marriage would not work.

[8] The plaintiff denied the defendant's allegations. The plaintiff says she had raised the issue of the registration of the marriage with the defendant on several occasions and the defendant had replied that registration was not necessary and redundant as the religious ceremony was legal in Malaysia. The plaintiff believed the defendant and states that she left London to enter into a lawful union with the defendant and to resettle in the United States after the marriage. She asserts that she has been deliberately deceived by the defendant.

[9] The plaintiff says that the issue of her trying to separate the defendant from his mother does not arise at all for the intention had been for the plaintiff and defendant to move to the United States after the marriage. The plaintiff in evidence had stated that she had been cordial with the defendant's mother as well as all his siblings and in fact had spoken to the defendant about attending to his mother's material needs and comfort before they left for the United States.

[10] The plaintiff further states that she had attended the wedding reception and also gone with the defendant to all his siblings houses thereafter. She says that she had not unreasonably refused to follow any of the defendant's wishes including visiting his relatives. The plaintiff denies that she had wanted the defendant to follow her to Singapore for a second Hindu wedding ceremony. She says that she had merely wanted to go to Singapore to collect her belongings before moving to the United States. As the defendant refused to take her along, the plaintiff stayed back in Singapore whilst the defendant departed to California at the end on November 1992.

[11] Sometime in December 1992, the plaintiff travelled to the United States in search of the defendant to resolve matters. When she met the defendant in California, he put her up in a shady motel, which according to the plaintiff was unfit for a married woman. Thereafter she went and stayed with friends who were kind enough to put her up. Again there was no indication from the defendant that he would go through with the registration of the marriage. If indeed it was the defendant's intention to

postpone the registration for the purposes of the United States' immigration requirements, the defendant could have registered their marriage in the United States to conform to such immigration requirement. This the defendant did not do. In fact the defendant's pleadings and evidence is at variance on this issue. In para. 6 of the Pembelaan dan Tuntutan Balas the defendant states that:

> 6. Sebab-sebab yang benar mengapa perkahwinan itu tidak didaftarkan ialah:
>
> (i) Defendan telah rancang untuk mengambil plaintif ikut bersamanya ke Amerika Syarikat pada akhir bulan November, 1992;
>
> (ii) Apabila defendan semak dengan kedutaan mengenai prosidur untuk mengambil isteri bersama ke Amerika Syarikat, defendan diberitahu jika seseorang itu telah berkahwin disisi undang-undang dengan mendaftar perkahwinannya, isteri itu tidak akan dibenarkan masuk ke Amerika Syarikat dalam 2 tahun dari tarikh perkahwinan;
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> (iii) Oleh sebab defendan ingin mengambil isterinya bersamanya ke Amerika Syarikat defendan menangguhkan pendaftaran perkahwinannya untuk waktu sementara menanti perkembangan di Amerika Syarikat;
>
> (iv) Akan tetapi plaintif tidak dapat ikut defendan ke Amerika Syarikat sebab selepas perkahwinan pada 1.11.92 dalam masa 22 hari sahaja plaintiff dan defendan bertengkar dan muncul selisih faham yang serius;

[12] In variance with the pleadings, in his evidence in chief the defendant says as follows:

> Q. Did you take the plaintiff along when you returned to the US?
>
> A. No, we never planned for the plaintiff to accompany me when I returned to the US. She wanted to return to Singapore to see her parents and pack up her things and she was to come to the US sometime later. Furthermore, we were worried that if we travelled together we might arouse suspicion and end up answering a lot of queries from the US immigration authorities.

[13] The plaintiff says that she met the defendant several times during the period of her stay in California and had hoped that the defendant would fulfil his promise of marriage. The defendant says

that he was willing to take her back if she went and stayed with his parents and siblings in Malaysia and to smooth out matters with them first. The defendant says this was not accepted by the plaintiff.

[14] The plaintiff's finances were fast depleting and she was squatting in the home of friends whilst in the United States. The defendant had not taken her into his home. There did not seem to be any solution in sight. She was in despair and started having suicidal thoughts. She then decided to force the issue and had gone into the defendant's home without the defendant's knowledge. The plaintiff said in evidence that though she was in total despair and had written a suicide note, she did not get the courage to take her own life. When the defendant discovered the plaintiff sleeping in his bedroom, he filed a police complaint in which he described the plaintiff as his girlfriend and alleged that she had broken into his home and caused property damage. The plaintiff was taken to hospital for psychiatric evaluation. Upon her discharge, the defendant refused to take her into his home. The plaintiff then filed for maintenance in the California Courts in the belief that she was lawfully married to the defendant in Malaysia. In the course of the California proceedings, the defendant had claimed that the Hindu marriage was void for it was not registered in Malaysia in accordance to the said Act. According to the plaintiff, this was the first time that the she knew that the marriage was not valid. Until then she thought she was trying to save a lawful marriage. The plaintiff says that the defendant had not told her of this, and that if he had told her, she would not have agreed to the Hindu ceremony or gone through what she was led to believe was a lawful marriage. The defendant claims that the plaintiff knew all along that there would be no registration in Malaysia because of United States Immigration requirements and that they would do the registration subsequently in the United States. The plaintiff denies this. She says that had she known of this she would not have gone through the Hindu marriage and consummate it.

[15] The plaintiff then wrote to the National Registration Department in Malaysia ("NRD") seeking their confirmation of her marriage status. The NRD confirmed that the marriage is void for non-registration. The plaintiff then discontinued the action in California and came back home. She then filed this suit in the Kuala Lumpur High Court in 1994, which was transferred to the Penang High Court in 2001 upon the defendant's application.

[16] The parties have given two conflicting versions as to the issue of registration of the marriage in Malaysia. The defendant says that the plaintiff knew all along that there would be no registration of the marriage in Malaysia. The plaintiff denies this and says that she was led to believe that the Hindu marriage was a lawful and valid marriage. It is my duty then based on the evidence and contemporaneous documents to ascertain which version is more probable.

[17] From the course of the trial, I cannot help but make the impression that the plaintiff is a very traditional and religious Hindu; who ardently follows the customs and religious practices of the Tamil Hindu community. Though having been brought up in modern Singapore and having studied and lived in London, she was looking forward to marrying a Tamil Hindu man in accordance with the customs and traditions of her faith. Though she had several proposals for marriage whilst in London, she had rejected them for she had wanted to marry a Tamil Hindu. When, the defendant was introduced to her through her family, she took a liking to him. In fact it was the defendant who had initiated the first move. After the initial phone contact, the defendant too having found a liking to the plaintiff, travelled to London to meet her. There love blossomed and bloomed. The plaintiff admitted in evidence that she was then very much in love with the defendant. The plaintiff's strict traditional adherence to Hindu custom and practices comes across very strongly in evidence. Though, the plaintiff and the defendant had stayed together in a single room whilst holidaying in Scotland prior to the Hindu marriage, there was no sexual contact. They went through the customary engagement and religious rites before she would agree to consummate the marriage. I believe the plaintiff when she says that, had she known that the Hindu marriage was not valid in law, she would not have agreed to any sexual relations with the defendant. The defendant had cleverly used the law to his benefit and to the grave detriment of the plaintiff; labelling her his girlfriend when it suited him.

[18] The plaintiff was willing to give up everything she had in London for the promise of marriage by the defendant. This, I must say, was done at great personal sacrifice. The plaintiff must have had complete faith in the defendant's words for her to give up her home and career in London; and to move to a strange and new place far away from her familiar surroundings to start a new life with the defendant in California. Having done all these, there

A is no reason for the plaintiff to suddenly become unreasonable and to jeopardize her marriage. The plaintiff had by and large conformed to the wishes of the defendant. Some differences had arisen in respect of her intention to go to Singapore to gather her belongings before her departure to the United States. These
B differences are hardly the kind that would be considered grounds to bring a marriage to an end. There was very little time before their intended departure to the United States at the end of November 1992 and I accept the plaintiff's explanation that her intended trip to Singapore was to collect her belongings. After all,
C if the defendant had intended to travel to California with the plaintiff, then surely the defendant would have wanted her to collect her belongings from Singapore.

[19] The defendant says that the plaintiff refused to attend a
D wedding reception hosted by his elder brother in Ulu Bernam and thereafter to visit his mother at Teluk Intan. This incident according to the defendant had sparked off serious arguments between the two of them. The plaintiff says that she was never told that she was to attend a wedding reception at Ulu Bernam.
E The plaintiff merely had a different idea and that was to go to Singapore to collect her belongings. The defendant says in evidence that after the Hindu marriage he realized that their personalities were in total contrast and that they had argued so much during that short twenty odd days. This I find rather
F difficult to fathom. How is it that the defendant who had gone a calling to London several times and having met and spent time with the plaintiff and spoken to her on the phone over a period of time and having proposed marriage thereafter, suddenly find that their personalities were in total contrast.

G **[20]** The defendant says that in the end the plaintiff did not accompany him to the United States because within the 22 days after the 'wedding', the plaintiff's conduct was such that it would be impossible for him to continue a life with her. The defendant
H therefore admits the breach of his promise to marry the plaintiff. From the pleadings and the evidence it is clear that the defendant had formed a settled decision not to have a married life with the plaintiff after the Hindu wedding ceremony; or of taking her to the United States with him; and therefore he obviously had no
I intention of fulfilling his promise to marry her.

[21] The other, interesting piece of evidence from the defendant is the following:

> We argued so much even in the short period we were together that I asked my parents whether they had checked our horoscopes properly for our compatibility and was told that my parents had left it to the plaintiff's mother to do so and they had just taken her word for it.

It is clear that the defendant was in hindsight looking at horoscopes for compatibility and not working on resolving the differences. It is also very evident that when the defendant left Malaysia for California in November 1992, he never had the intention of registering the marriage and fulfilling his promise to marry the plaintiff. I find the defendant's claim that the marriage alliance had irretrievably broken down hardly a few weeks after the Hindu marriage ceremony to be wholly untenable for the defendant has not given any cogent reasons for that contention. Even after 18 years, the plaintiff was asking in this court what wrong had she done to deserve what she got; and the defendant did not and has not satisfactorily answered that question.

[22] Counsel for the defendant argues that the defendant has fulfilled his obligation in so far as his promise to marry for he did go through a Hindu marriage ceremony. I cannot accept that argument. A promise to marry must be one which results in a valid and lawful marriage in which the plaintiff would be able to avail herself of legal remedies flowing from it. The fact that this was not the case is amply shown by the events that took place in the California court and thereafter. Had that Hindu marriage ceremony been officiated by a priest who is also an Assistant Registrar of Marriages, as is customary nowadays, and the marriage registered according to the said Act, then the plaintiff would have been entitled to all legal rights and remedies, including maintenance. On the contrary, the plaintiff was merely dismissed by the defendant as his girlfriend - left high and dry to fend for herself in a strange land. The customary Hindu marriage and the tying of the 'thali' signify marriage under the Tamil Hindu custom. In the eyes of her conservative community the plaintiff was regarded as the defendant's wife; but in the eyes of the law they were not husband and wife. The plaintiff was ostracized by her family and community. She ended her "marriage" to the defendant not by any legal proceedings but by dropping the "thali" into the temple donation box.

[23] Even though years later the plaintiff had married an European man, she has still not come to terms with the bitterness of her experience. The plaintiff had always wanted to marry a Tamil Hindu man and to live within her community. This wish was dashed by the defendant who had used and abused her. As a result of her status, the plaintiff subsequently found it difficult to marry within her community. She is not able to freely practice her religion and customs within the confines of her present marriage and home. She attributes these short comings to the defendant. Even after 18 years, I could sense the pain of her torment.

[24] Having evaluated the evidence as a whole, I find that the plaintiff's version of events to be more probable and that the plaintiff has on a balance of probabilities proved her case. Therefore, I allowed the plaintiff's claim with cost. In respect of the defendant's counterclaim, I agree with the plaintiff's counsel that it does not disclose any cause of action. The matters complained of are to have taken place in California and as such this court does not have jurisdiction. The pleadings are devoid of any discernable cause of action and therefore, I dismissed the counterclaim with cost.

[25] The award of damages for breach of promise to marry is said to be at large. There is a dearth of reported cases in Malaysia on breach of promise to marry. Though breach of promise to marry is no longer actionable in England, I have taken guidance from principles laid down in century old English decisions. In *Finlay v. Chirnley* [1888] 20 QBD 494 @ 498, Lord Esher MR said that:

> ... It is true that in the old days an action for breach of promise of marriage was in form an action founded on contract, and that even now it is still treated as an action for breach of contract. Formerly an action of tort was almost inevitably a personal action; but it did not follow necessarily that an action was not personal because it was founded on a breach of contract. The complaint in a breach of promise of marriage is indeed a complaint of a breach of contract, but the injury is treated as entirely personal, and not only are damages always given in respect of the personal injury to the Plaintiff, but also damages arising from and occasioned by the personal conduct of the Defendant; and evidence of the conduct of both parties is allowed to be given in mitigation or aggravation. The ages of the respective parties may be taken into account, as well as their whole behaviour; and the damages may be much enlarged if the conduct of the Defendant has been an

> aggravation of the breach of his promise. A consideration of these facts goes to shew that an action for breach of promise of marriage is strictly personal, and that, although in form it is an action for breach of contract, it is really an action for a breach arising from the personal conduct of the Defendant and affecting the personality of the Plaintiff ...

Lord Bowen LJ also referred (at p. 506) to the case of *Smith v. Woodfine* [1857] 1 CN (NS) 660, where Willes J had said:

> This action ... is given as an indemnity to the injured party for the loss she has sustained, and has always been held to embrace the injury to the feelings, affections, and wounded pride, as well as the loss of the marriage. From the nature of the case, it has been found impossible to fix the amount of compensation by any precise rule, and as in tort, the measure of damages is a question for the sound discretion of the jury in each particular instance ...

[26] In *Quirk v. Thomas* [1916] 1 KB 516, @ 518 Waugh KC, counsel for the plaintiff, referred to the same case of *Smith v. Woodfine* [1857] 1 CB (NS) 660 and said:

> ... In the case of an action for breach of promise of marriage, though it is a case of contract, the general damages are of a purely personal or sentimental character and may be awarded for injury to the wounded feelings and pride of the Plaintiff caused by the breach as well as for the loss of the marriage ...

[27] In the same case, Swinfen Eady LJ cited with approval (at p. 527) the earlier case of *Finlay v. Chirney (supra)* and said that:

> damages are at large, and may be given of a vindictive and uncertain kind, not merely to repay the Plaintiff for temporal loss but to punish the Defendant in an exemplary manner ... .

Phillimore LJ, in the same case, at p. 531 said:

> Now to deal with the one special action of breach of promise of marriage. It is an action for breach of contract, and would therefore seem to survive against the executor of the contract-breaker, but it is an action of a special character where the measure of damages may be that which is otherwise only applicable in some actions of tort. Exemplary or punitive damages can be given. The misconduct of the Defendant can be used for enhancing the damages, though it has no direct bearing upon any question of compensation of the Plaintiff ... .

Then at p. 534, His Lordship referred to the fact that the plaintiff in that case gave up her business to marry the plaintiff, and said that the only way in which this matter of giving up her business could properly be introduced into the case at all was as an item of some assistance to the jury in measuring the damages they were to give. If it was worth her while to give up this business in order to get the man to marry her, it might be suggested that her loss by reason of his refusal was at least as great.

Pickford LJ, in the same case, at p. 538 said:

> An action for breach of promise is anomalous. It is an action arising ex-contractu, but the damages are not confined to such damages as are recoverable in other such actions. It is competent to give what are sometimes called punitive damages, ie, such as will compensate the Plaintiff not only for the money loss of the contract, but for the personal wrong that has been done to her. For this reason evidence of the loss of a business could be given to show the conduct of the Defendant in breaking off an engagement after such a sacrifice by the Plaintiff ...

[28] Further, in *Kremezi v. Ridgway* [1949] 1 All ER 662 @ 663, Hilbery J on damages for breach of promise to marry said:

> ... in English law, the damages are at large, the action being one of the exceptional actions in contract where English law allows more than the strict measure of damages ordinarily applicable to contract ...

Then @ p. 664 His Lordship said:

> If it is necessary for my decision (though I doubt it), I would say that, while it is true that this particular type of contract - the exchange of mutual promises to marry - ends, so far as the legal enforcement is concerned, on the performance of the marriage ceremony, none the less the performance which the parties contemplated at the time they exchanged mutual promises is not exhausted by the performance of a mere ceremony. I am quite sure that no young woman, when she accepts a proposal of marriage and a contract is formed, would be satisfied if she were told that all the young man is undertaking by the promise is to go through a form or a ceremony with her. What the parties intend is an exchange of mutual promises to become one another's spouses - to become husband and wife with all that that should entail ...

[29] On the quantum of damages, in so far as local authorities are concerned, in *Dennis v. Sennyah* [1963] 1 LNS 26, Hepworth J had awarded a sum of RM1,500 in general damages and RM620.10 in special damages. In *Nafsiah v. Abdul Majid (No 2)* [1969] 1 LNS 114, Sharma J had awarded RM1,200 as damages. However, in that case His Lordship had erroneously concluded [against authorities such as *Finlay v. Chirney (supra)* and *Quirk v. Thomas (supra)*, which were not referred to him] that there is no difference between this action and any other action for damages for breach of contract. In *Doris Rodrigues v. Bala Krishnan* [1980] 1 LNS 205, Ajaib Singh J had awarded RM5,000 as damages and costs. These cases involved local parties, and local conditions, prevailing some 30-40 years ago and even for local conditions, inflation would have to be factored in.

[30] However, our case involves a foreign plaintiff, who gave up home and heath, and career, to travel to our distant land, to marry the defendant, who had promised her much, and given her the hope and expectation that she would be in a better place, only to breach his promise to marry her, and cause her great distress, hurt, humiliation and anguish. The plaintiff in our case sacrificed a great deal to marry the defendant; her job and home in London; her career; her marriage prospects to good Hindu men; and indeed, even her prospect of being married to any other Hindu. Her hurt was all the more apparent, after all these years.

[31] The plaintiff says in evidence that only seven years after her wedding ceremony with the defendant, did she marry her present husband, as it took her a long time to trust anyone; that she had always wanted to marry in her own Tamil Hindu community and that she gave up her home and job in London to marry the defendant; that he not only hurt her feelings deeply but also wrecked her career, and caused her financial loss. She says she had been ostracised socially in her community, and did not receive invitations even from some relatives and friends, as she was not 'acceptable' to them; she says that she could not marry another Tamil Hindu, since according to their religion she was married to the defendant; and that she had to choose between marrying a non-Hindu, or remaining single and childless.

[32] The plaintiff says that she not only wants to recover the monies she spent getting engaged to the defendant, and coming for the wedding ceremony, but also damages for the anguish and

torment he put her through, by not legally marrying her, after getting engaged to her; and she also seeks damages for giving up a good job and career in investment accounting in London and her residence there. She says that even after all these years, she still feels the hurt and betrayal and that she has been scarred for life. She says her dream of marrying within her own community, religion and culture, and having family thereafter, was destroyed by the defendant. She gives details of her career prospects which she lost and that she could not work in United States or secure suitable employment in Singapore, and married her present husband only in 1999.

[33] Taking into account the standing and conduct of parties, the wounded feelings and pride of the plaintiff, ostracism from her community, pain, anguish and torment, career losses suffered by the plaintiff's relocation from London and the change of position that the plaintiff has undergone in reliance of the promise, I awarded the sum of RM150,000 in general damages.

[34] In so far as special damages are concerned, the plaintiff has claimed for the sum of RM50,000 for the expenses incurred in the Singapore engagement and Hindu marriage ceremony in Malaysia and the sum of RM120,000 occasioned by the plaintiff leaving her employment in London. It is trite law that special damages must be proved. There is evidence that the defendant had given her IRP114,000 towards the wedding expenses. In respect of her claim for the engagement and wedding expenses, I allow the sum of RM21,936.30 as this has been proven. In respect of the plaintiff's claim for loss of income from her London job and loss resulting from the surrender of her London house, I disallow this head of claim for I find that the plaintiff has failed to adequately prove the loss. The plaintiff's earnings could have been proved by production of Income Tax returns, bank records or calling of witnesses to corroborate the plaintiff's testimony. This was not done. There is merely the plaintiff's assertion that she was earning GBP30,000 annually. This is insufficient.

[35] I then invited counsel to submit on the issue of interest in view of the long length of time from the filing of this action in 1994 and my present judgment. After hearing submissions on the issue of interest, I made the following award:

(a) interest at the rate of 6% on general damages from the date of Writ and 8% from date of judgment;

(b) interest at the rate of 4% on special damages from date of Writ and 8% from the date of judgment; and

(c) cost for the plaintiff.